

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, SPIRIT  
FACTOR LLC d/b/a FUEL ATHLETICS,  
and STARS AND STRIPES GYMNASTICS  
ACADEMY INC. d/b/a STARS AND  
STRIPES KIDS ACTIVITY CENTER,  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

VARSITY BRANDS, LLC; VARSITY  
SPIRIT, LLC; VARSITY SPIRIT  
FASHION & SUPPLIES, LLC; and U.S.  
ALL STAR FEDERATION, INC.,

Defendants.

Case No. 2:20-cv-02600-SHL-cgc

**Jury Trial Demanded**

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**NOTICE**

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Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, and Stars and Stripes Gymnastics Academy Inc. d/b/a stars and Stripes Kids Activity Center (“Plaintiffs”) respectfully submit this Notice regarding the appointment of interim co-lead class counsel. On August 19, 2020, Plaintiffs in this action filed a Joint Motion for Entry of Case Management Order No. 1 (Dkt. No. 14) seeking the appointment of interim lead counsel. Thereafter different Plaintiffs filed a related action, *Radek, et al. v. Varsity Brands, et al.*, No. 20-cv-02649 (W.D. Tenn.) (the “*Radek Action*”).<sup>1</sup>

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<sup>1</sup> Earlier today, pursuant to Fed. R. Civ. P. 42, Plaintiffs in the instant case, along with Plaintiffs in the *Radek Action*, filed a Joint Motion to Consolidate the two cases. (Dkt. No. 23.). Additionally, plaintiffs in the *Radek Action* are filing a similar notice on their docket. Both cases are brought against Defendants Varsity Brands, LLC; Varsity Spirit, LLC; Varsity Spirit Fashion & Supplies, LLC; and U.S. All Star Federation, Inc.

Following conversations with counsel in the *Radek Action*, Plaintiffs here have reached an agreement to move for the appointment of Berger Montague PC, Cuneo Gilbert & LaDuca, LLP, and Labaton Sucharow LLP as Co-Lead Interim Class Counsel and Branstetter, Stranch, & Jennings, PLLC as interim Plaintiffs' Liaison Counsel for the Direct Purchaser Plaintiff class, subject to the Court's approval. Today, Plaintiffs are submitting an Amended Motion for Entry of Case Management Order No. 1 and will be submitting a revised proposed order to their Joint Motion for Entry of Case Management Order No. 1 (Dkt. No. 14) to that effect.<sup>2</sup>

Of particular significance in the Rule 23(g) context, the proposed leadership structure emerged through a "private ordering" process and is the unanimous choice of all plaintiffs. Such cooperation is strongly encouraged by the Manual for Complex Litigation §10.22 (4th ed. 2004), and Plaintiffs respectfully submit that it will result in optimal representation here for the proposed direct purchaser class. *See id.* ("In some cases the attorneys coordinate their activities without the court's assistance, and such efforts should be encouraged."); *see also In re Cal. Title Ins. Antitrust Litig.*, No. 08-cv-1341, 2008 WL 4820752 (N.D. Cal. Nov. 3, 2008) (where there were no competing applicants, appointing three privately ordered firms as interim co-lead class counsel); *In re Cmty. Bank of N. Va. Mortg. Lending Practices Litig.*, No. 02-cv-1201, 2011 WL 4382942, at \*2 (W.D. Pa. Sept. 20, 2011) (citing the Report of the Third Circuit Task Force, Selection of Class Counsel, 208 F.R.D. 340, 416 (2002), and noting that "the private ordering method of selecting interim lead counsel has long been the preferred approach").

Dated: September 8, 2020

Respectfully submitted,

s/ J. Gerard Stranch, IV  
J. Gerard Stranch, IV (TN BPR #23045)  
Benjamin A. Gastel (TN BPR #28699)

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<sup>2</sup> Plaintiffs in the *Radek Action* will also be filing papers in support of the entry of Case Management Order No. 1.

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the Proposed Direct Purchaser Class*

## **CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing document was filed with the Court's Case Management/Electronic Case Filing System, this 8<sup>th</sup> day of September, 2020, and served upon the following counsel:

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